HIGH COURT OF UTTARANCHAL AT NAINITAL

(Court's order whether the case is or not approved for reporting.)

(Chapter VIII Rule 32 (2)(b)

Description of the case.

Civil Revision No. 386 of 2004

Post Master General, Bareilly
Region Bareilly and others

Vs.

Keshav Dutt Pandey
S/o late Bhola Dutt Pandey

Approved for reporting.

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Not approved for reporting

Date of decision 7-8-2004.

Initial of Judge

HIGH COURT OF UTTARANCHAL AT NAINITAL

Civil Revision No. 386 of 2004

(Old No. 67 of 2000)

Post Master General, Bareilly
Region Bareilly and others.

.....Defendant/Revisionists

Vs.

Keshav Dutt Pandey
S/o late Bhola Dutt Pandey
R/o Hindustan Stone Company,
Notinagar, Arjunpur.
Dist. Nainital and others.

....Plaintiff/ Respondents.

Counsel for the petitioner Sh. Shishir Kumar
Counsel for the Respondent Sh. B.D. Upadhya

Dated:- 7-8-2004

Hon'ble Rajesh Tandon J.

Heard Sh. Shishir Kumar learned counsel for the revisionists and Sh. B.D. Upadhay counsel for the respondents.

By the present civil revision the order of eviction has been challenged.

Brief facts of the case are that the plaintiffs are the owners and landlords of the premises and building at Garur (Baijnath) in which the sub post office and the residence of Sub-Postmaster are situated. The building was rented to the defendants for post office and the residence at the monthly rent of Rs. 500/- through a lease deed, which expired on 28th February 1993. After the expiry of the lease deed i.e. on 28-2-1993, the defendant Nos. 3 and 4 assured the plaintiffs that the building will be vacated soon and necessary formalities in this regard are competed, but nothing was done in this regard. Ultimately, the plaintiff No.1 gave a notice through his counsel on 1-7-1995 calling upon them to pay the entire amount of

damages from 1-3-1993 at the rate of Rs. 50/- per day and vacate the building within 30 days of the notice but the defendants refused to comply with it.

Again the plaintiff Nos. 1 to 3 served a notice on the defendants on 21-12-1995 through their counsel calling for the damages at the rate of Rs. 50/- per day from 1-3-1993 for their unauthorized and illegal possession and vacate the premises within 30 days from the date of receipt of the notice. In reply to the notice, the defendant no.2 refused to pay the damages and vacate the building. The cause of action arose on 1-3-1993 when the lease expired and continued to accrue when the period of notice i.e. 1-7-1995 and 21-12-1995 calling upon the defendants to pay the damages and terminating the tenancy of the defendants expired. Then the present suit was filed in the court on 12-6-1996. No written statement has been filed by the defendant Nos. 1 and 2.

In paragraph No.1 of the plaint it has been admitted and it has also been admitted that the monthly rent was Rs. 500/- per month on the basis of the lease deed, which was being paid. In Additional pleas, it has been said that since the period of lease was expiring on 28-2-1993, therefore, the original tenant namely, Sh. Bhola Datt Pandey was informed on 30-11-1992 to renew the lease. A letter was written by Sh. Keshav Datt, plaintiff no.1 on 10-12-1992 to renew the lease w.e.f. 1-3-1993 at the monthly rent of Rs. 1200/- per month, otherwise the premises be got vacated. The Postal Department referred the matter to the Assessment Committee of the Department.

On the pleadings of the parties, the following points for determination arise:-

(1) *Whether the defendant No.4 is liable to be evicted from the premises in suit after the expiry of the fixed term lease, which expired on 28-2-1993? If so it is effect.*

(2) *Whether the plaintiffs are entitled for damages at the rate of Rs. 50/- per day w.e.f. 1-3-1993?*

(3) *To what other relief, if any, are the plaintiffs entitled?*

It is admitted to the parties that the provisions of U.P.Act No. 13 of 1972 are not applicable to the premises in question. The lease deed expired on 28-2-1993 and a letter was rent by Sh. Keshav Dutt Pandey on 10-12-1992 for renewing the lease deed for Rent from 1-3-1993, provided the monthly Rent is paid at the rate of Rs. 1200 per month. The department has not take any decision and the matter remain pending till12-6-1996 plaintiff has filed the suit. The tenancy was fixed for the period, however the period had already expired. After expiring of the tenancy, the defendant No.4 did not vacate the premises and by efflux of time, the defendant No.4 is liable to be evicted.

The Trial Court has fixed damage at the rate of Rs. 500 per month from 1-3-1993.. The Trial Court has held that since the defendant has not taken decision for the renewal of the rent of a demised premises, therefore the plaintiff is entitled to recover the possession from the defendant.

I find no illegality or irregularity in the order passed by the trial court.

The Revision has no force and is hereby dismissed. No order as to costs.

(RAJESH TANDON J.)

Dt. 7-8-2004

M.K.